
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

C.R. BARD, INC.,

Plaintiff,

vs.

MEDICAL COMPONENTS, INC.,

Defendant.

**ORDER AND MEMORANDUM
DECISION**

Case No.: 2:12-cv-32-RJS-EJF

Honorable Robert J. Shelby

On December 17, 2012, the Honorable Evelyn Furse issued an Order Granting in Part and Denying in Part Defendant's Motion for Partial Stay. (Dkt. No. 79.) Magistrate Judge Furse stayed the case in its entirety to await reexamination of relevant patents-in-suit by the United States Patent and Trademark Office (USPTO). On December 31, 2012, Defendant Medical Component, Inc. (Medcomp) objected to Judge Furse's order. On that same day, Medcomp also filed a Motion for Dismissal Without Prejudice.

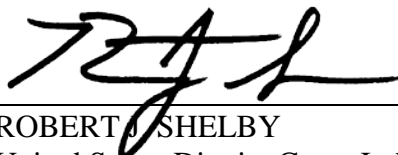
The court will not disturb Judge Furse's ruling. Magistrate judges have the authority to issue orders on non-dispositive pretrial motions, 28 U.S.C. § 636, and the district court will only disturb those orders if they are clearly erroneous or contrary to law. *Id.* The court has carefully reviewed the relevant motions and memoranda and finds that nothing in Judge Furse's order was clearly erroneous or contrary to law. The court agrees with Judge Furse's conclusion that the Bard patents-in-suit and the Medcomp patent-in-suit are related and that "the USPTO's actions concerning the Bard patents-in-suit may narrow issues relevant to Medcomp's counterclaim." (Dkt. No. 79.)

Under Rule 41(a)(2), voluntary dismissal of a claim is within the sound discretion of the court. Medcomp chose to file a counterclaim in this forum and now, based on Judge Furse's order to stay the case, it seeks to pursue its claim elsewhere. But Medcomp's desire to file the claim in another forum is not a compelling reason to grant the motion. *See Sanders v. Sw. Bell Tel., L.P.*, 2009 WL 1812424, at *3-4 (N.D. Okla. June 23, 2009) (denying motion for voluntary dismissal because plaintiff was seeking to file claim in a more favorable forum). Medcomp is seeking an end run around the stay and the court is not inclined to encourage such forum shopping. *See Scottsdale Ins. Co. v. Tolliver*, 636 F.3d 1273, 1280 (10th Cir. 2011) (noting the court's preference for a legal rule that "discourage[d] forum shopping"). The court finds that Medcomp has not provided an adequate basis for the court to grant its Motion to Dismiss.

For the foregoing reasons, the court OVERRULES Medcomp's Objection to Magistrate Judge's December 17, 2012, Order Staying Case (Dkt. No. 95) and DENIES Medcomp's Motion for Dismissal Without Prejudice of its Sixth Counterclaim (Dkt. No. 96).

SO ORDERED this 15th day of February, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. J. Shelby", is written over a horizontal line.

ROBERT J. SHELBY
United States District Court Judge